



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
MOTOR FUEL TAX ADMINISTRATION  
P.O. DRAWER E  
DOVER, DELAWARE 19903 - 1565

THOMAS R. CARPER  
GOVERNOR

**POLICY DIRECTIVE**  
**TAXATION OF LOW SULFUR CLEAR DIESEL FUEL**

In order to clarify previous correspondence issued from the Motor Fuel Tax Administration, and in accordance with Title 30, Chapter 51, Section 5132 (a) and (b), Delaware Code, sales of *low sulfur, clear* (no red dye) *diesel fuel* to purchasers not the holder of a valid special fuel user or dealer license must include the State of Delaware special fuels excise tax in the purchase price. Only licensed special fuel users and dealers can purchase *low sulfur, clear diesel* fuel tax free. As in the past, licensed special fuel suppliers are authorized to purchase special fuel tax free regardless of the color of the fuel.

Sales of diesel fuel, which contains evidence of red dye in accordance with Internal Revenue Service fuel dying regulations, shall be exempt from the State of Delaware special fuel excise tax regardless of the license status of the purchaser. Specifically, *red dyed diesel fuel* sales from a licensed supplier to an unlicensed purchaser are not required to have the State of Delaware special fuels excise tax included in the purchase price. Sales of tax free, *red dyed diesel fuel* are to be reported by licensed special fuel suppliers on disbursements schedule 6E identifying monthly totals by customer. The words "red dyed fuel" are to be recorded in column 4.

This Policy Directive is made in accordance with Title 30, Chapter 51, Section 5138 (a), Delaware Code. The effective date of this Policy Directive shall be October 15, 1995.

RECOMMENDED BY:

Dale A. Shuirman

DALE A. SHUIRMAN, DIRECTOR  
MOTOR FUEL TAX ADMINISTRATION

APPROVED BY:

Anne P. Canby

ANNE P. CANBY, SECRETARY  
DEPARTMENT OF TRANSPORTATION

DATE: October 15, 1995

Christine Pochomis

CHRISTINE POCHOMIS, DIRECTOR  
DEPARTMENT OF TRANSPORTATION




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GOVERNOR

MEMORANDUM

TO: All Licensed Special Fuel Users, Dealers, Suppliers and Fuel Oil Dealers/Peddlers

FROM: Dale A. Shurman, Director   
Motor Fuel Tax Administration

DATE: January 23, 1996

SUBJECT: Policy Directive Clarification

This Memorandum is intended to further clarify the **POLICY DIRECTIVE** regarding the **TAXATION OF LOW SULFUR CLEAR DIESEL FUEL**, signed by the Secretary of the Department of Transportation, Anne P. Canby on October 15, 1995,

**LOW SULFUR, CLEAR SPECIAL FUEL:**

The Policy Directive states that *only licensed Special Fuel Users, Dealers and Suppliers can purchase low sulfur clear special fuel, tax free*. Sales of low sulfur clear special fuel to purchasers not the holder of a valid User, Dealer or Supplier license issued by the Motor Fuel Tax Administration, must include the appropriate State of Delaware Special Fuel excise tax regardless of historical Exemption Markers affixed to the tank or pump. The Policy Directive eliminates the Exemption Marker program that the Motor Fuel Tax Administration has previously enforced. *An exemption marker or exemption number as previously issued by this Administration does not authorize the sale or purchase of tax free low sulfur, clear special fuel*. The Policy Directive serves to further clarify Title 30, Chapter 51, Section 5132 (a) & (b), Delaware Code.

**HIGH SULFUR AND LOW SULFUR, RED DYED SPECIAL FUEL:**

Transactions involving the sale and/or purchase of special fuel containing evidence of red dye in accordance with Internal Revenue Service fuel dyeing regulations, are to be exempt from the State of Delaware Motor Fuels Excise Tax. Red dyed special fuel shall be exempt from the Delaware Motor Fuels Excise Tax regardless of the sulfur content of the fuel. Please refer to the exceptions paragraph below. No exemption markers are required to sell or purchase red dyed special fuel tax free.

**WARNING:** IT IS A VIOLATION OF TITLE 30, CHAPTER 51, SECTION 5132(b), DELAWARE CODE TO DELIVER TAX FREE SPECIAL FUEL TO, OR USE TAX FREE SPECIAL FUEL IN A REGISTERED MOTOR VEHICLE (vehicle with a valid license plate and registration as issued by the Division of Motor Vehicles).

As indicated in the memo dated November 20, 1995, this Administration is authorized by, and working closely with the IRS to perform dyed fuel inspections of licensed vehicles to enhance compliance. Anyone caught using red dyed special fuel in the propulsion tanks of a licensed motor vehicle will be subject to IRS penalties (\$10.00 per gallon or \$1,000.00 which ever is greater) as well as State of Delaware taxes, full penalties and full interest as authorized by Title 30, Chapter 51, Section 5136(h), Delaware Code.

Individuals or organizations having both taxable and non-taxable uses of special fuel have the following options regarding special fuel purchases and usage:

1) Operate a dual tank system with one tank designated as **"ON ROAD"** taxed (clear) and the other tank designated as **"OFF HIGHWAY"** red dyed tax free fuel. Pay the State of Delaware Motor Fuels Excise Tax to the supplier of the taxed tank.

2) Operate one tank designated as **"OFF HIGHWAY"**, receiving only red dyed tax free fuel into said tank. Purchase all taxable **"ON HIGHWAY"** clear fuel at retail stations.

3) Operate one tank, become licensed and bonded as a Special Fuel User. Receive tax free, clear fuel as a licensed Special Fuel User, and submit monthly tax returns of the inventories, receipts and usage from the licensed tank.

4) Operate one tank, purchase taxed, clear special fuel. Use clear special fuel in **"OFF HIGHWAY"** equipment and absorb the cost of tax. This clearly is not advisable if the user has significant **"OFF HIGHWAY"**, tax free usage.

#### REPORTING:

As identified in the Policy Directive, sales of tax free *Red Dyed Special Fuel* are to be reported by licensed special fuel suppliers on the disbursements schedule 6E, identifying monthly totals by customer. The words **"red dyed fuel"** are to be recorded in column 4. Tax free *Clear Fuel* sold to licensed special fuel users, dealers or suppliers should continue to be reported on the disbursements schedule 6E with the license number of the purchaser recorded in column 4.

#### EXCEPTIONS:

1) **School Buses** - School buses used to transport students are federal tax exempt, as such, school buses are authorized to use *Low Sulfur, Red Dyed fuel* by the IRS. However, the Delaware Motor Fuel Tax Administration **DOES NOT** exempt non-state owned school buses from the State motor fuels excise tax. This unique situation results in licensed, non state owned school buses, operating legally with red dyed, federal tax free fuel, however, the State of Delaware Motor Fuels Excise Tax is due on this fuel. Contract school bus operators have three options as follows:

a) Become licensed and bonded as a Special Fuel User, purchase Low Sulfur, Red Dyed, tax free Special Fuel. Then remit the Delaware Motor Fuels

Excise Tax based on the usage in buses.

b) Make arrangements with a Licensed Special Fuel Supplier to supply federally tax exempt, Red Dyed Low Sulfur Special Fuel, and pay the State of Delaware Motor Fuels Excise Tax to the licensed Supplier.

c) Purchase federal and state taxed, clear special fuel and apply to the IRS for a tax refund on the federal special fuel excise tax paid. Only State owned school buses are exempt from the State motor fuels excise tax.

2) **Boat marinas** - The Director of the Delaware Motor Fuel Tax Administration has ruled that Low Sulfur Clear Special Fuel sold to boat marinas for redistribution to watercraft, both pleasure and commercial, shall be exempted from the Policy Directive. Low Sulfur Clear Special Fuel sold to marinas for redistribution to watercraft is exempt from the State of Delaware Motor Fuels Excise Tax.

Suppliers of Low Sulfur Clear Special Fuel to marinas are to report such sales on disbursement schedule 6E with "MARINA" recorded on column 4.

If you have any questions regarding the this matter, you may contact the Motor Fuel Tax Administration at (302)739-4491.

jwm/DAS

cc: Christine Pochernis  
Peter A. Fillat  
Audit and Compliance Staff  
Jennifer Kiecan  
Sharon Bargo  
Robin West  
Valorie Pepper, IRS  
Gary Patterson, Executive Director,  
Delaware Petroleum Council